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ENVIRONMENTAL LAW

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> It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their wellbeing, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally. Parliament has considerably responded to the call of the nations for conservation of the environment and natural resources and enacted suitable law. The judicial wing of the country, more particularly, the Supreme Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution.[1]

IN THE present survey of the year 2006, all important reported judicial pronouncements made by the apex court and various high courts encompassing different facets of environmental law have been analyzed. An earnest attempt has been made to bring out the main principles of law declared by the courts. It is to be noted that during the period of survey about 37 cases relating to environment were decided; about 12 significant seminal pronouncements were made by the Supreme Court which will have far-reaching effect. It also demonstrates that the apex court is pragmatic in its approach and has put in essential environmental doctrines on a firm footing. Some of them have broken new grounds giving new dimensions to the Indian environmental law.

The role of the apex court as final interpreter is increasingly reflected in various judgments. It has aptly been observed that the protection of environment and conservation of natural resources is essential for the benefit of humanity and future generations and it cannot be ignored or denied in the garb of economic growth, as discriminatory and lustful use of natural resources would ultimately lead humanity to an ultimate disaster. Therefore, to secure

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1 *Intellectual Forum, Tirupathi* v. *State of A.P.*, (2006) 3 SCC 549 at 552.

'our common future' the development plans and policies must aim at sustainable development plans and policies that lead to economic growth. They must earnestly be formulated and sincerely observed. The Supreme Court in its judgments has established that the state has affirmative duties with regard to public trust of natural resources, which ought to be used for public purpose. On the other hand, it also provides for a high degree of judicial scrutiny on any action of the government which is a restriction on free use of common property. But the court while making proper scrutiny should make a distinction between the government's general obligations to act for the public benefit and the special and more demanding obligations, as a trustee of the natural resources. Thus, the state has an onerous responsibility to safeguard the representative samples of nature. And at the same time, it should not be oblivious of the basic needs of society e.g. right to potable water and shelter. This craftsmanship of social engineering has to be performed with great caution, conviction and sensibility. This is the golden thread running through the judicial pronouncements made during the period under survey.

The survey has been divided into six major areas – (I) Constitutional safeguards, (II) Protection and preservation of animals, (III) Conservation of forests and wildlife, (IV) Right to water, (V) Parks and play grounds, and (VI) Miscellaneous.

I CONSTITUTIONAL SAFEGUARDS

Environment jurisprudence and protection of natural resources

The basis, scope and nature of the state responsibility for the protection of natural resources was the main question before the Supreme Court in *Intellectuals Forum, Tirupathi* v. *State of A.P.*[2] The court was required to deal with the question at the jurisprudential level as it related to the conflict between the competing interests of protecting the environment and social development. The court held that:[3]

> The responsibility of the State to protect the environment is now a well accepted notion in all countries. It is this notion that in International Law gave rise to the principle of State responsibility for pollution emanating within one's own territories. This responsibility is clearly enunciated in the *United Nations Conference on Human Environment, Stockholm* 1972 (Stockholm Convention) to which India was a party.

Thus, there is a responsibility bestowed upon the government to preserve and protect the natural resources. To explain and buttress its conclusion the court discussed doctrines of sustainable development, public trust doctrine, principle of inter-generational equity and their origin and application.

2 *Ibid.*
3 *Id.* at 572.

In this case, two appeals were filed by two registered societies praying for the preservation and restoration of *status quo ante* of two tanks, historical in nature, which were in existence since 1500 A.D. situated in the suburbs of Tirupathi town, the renowned popular pilgrim centre. The water from the tanks was being used for irrigation and also for furthering percolation of water to improve the ground water table. It was also submitted that the nearby area was drought prone and there was a shortage of water in this area. Since the tanks were empty and were not in use for a long time, about 240 acres of land was alienated to the A.P. Housing Board for the construction of houses and other developmental activities. Several houses were constructed in and around both the tanks. The PIL was filed by socially spirited citizens in the high court. It was however dismissed. The high court seems to have given importance to need for development rather than the preservation of water resources.

The Supreme Court evoked the principle of "State responsibility" which was enunciated by the Stockholm Declaration of 1972. The court also declared that there cannot be economic development at the cost of the environment. In such cases the decision of the court cannot be based solely upon the huge amount of investment made by any party. The court pointed out that case involved a rudimentary principle that developmental activity should not get precedence over environmental issues. It opined that 'the debate between the development and economic needs and that of the environment is an enduring one. If the environment is destroyed for any purpose without a compelling developmental case, it will run foul of the executive and judicial safeguards. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of 'sustainable development'. Moreover, the concept of sustainable development as defined and provided by 'our common future' known as Brundtland Report, 1987[4] must be adopted. The apex court has already accepted it as guiding principle wherever there was a clash between environmental and developmental issues.[5] It concluded that while following the principle of sustainable development the court should 'find a balance between the developmental needs and the environmental degradation'. The court also discussed the principle of 'inter-generational equity' and public trust doctrine, which are integral part of the doctrine of sustainable development.

Affirmative duties of state and high degree of judicial scrutiny

It was declared by the court that the doctrine of public trust has become a part of Indian law and as a result 'the State as a trustee is under the legal

4 'Our Common Future' defines sustainable development as 'development that meets the needs of the present without compromising the ability of further generation to meet their own needs'. This concept was also adopted by the Rio-Declaration in 1992.

5 The court referred to its previous decisions- *Essar Oil* v. *Halar Utkarsh Samiti*, 2004 (2) SCC 392; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 653; *State of Himachal Pradesh* v. *Ganesh Wood Products*, (1995) 3 SCC 363; *Narmada Bachao Andolan* v. *Union of India*, (2002) 10 SCC 664; *Indian Council for Enviro-Legal Action* v. *Union of India*, 1996 (5) SCC 281.

duty to protect the natural resources'. The court summarised the law on this point as follows. [6]

> [P]ublic trust is more than an affirmation of State power to use public property for public purpose. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshland, and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purpose of trust.

It was also cautioned that the public use or transfer of these natural resources requires high degree of judicial scrutiny upon any action of the alienation of such property.[7]

Shelter as basic human right

It has been recognized by the courts since long time that shelter is one of the basic human needs just next to food and clothing. Policy regarding housing for public must "promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices". Such projects must be for the betterment of the conditions of the people. While deciding such cases the court must not be carried away by the huge amount of money spent on the mega projects but they must jealously safeguard the environment.

Thus, in the light of above principle the court held that the tanks were community property and state authorities are trustees to hold and manage such property for the benefits of community. Any alienation of such tank and land around it, in the light of article 48-A would amount to 'infringement of the right of community' as provided under the Constitution. The houses already constructed were permitted to stay and the court directed the state to ensure the revival of tanks and come out with a scheme of rain water harvesting.

Thus, the court came to the conclusion that (a) tanks are community property and state authorities are trustees, (b) tanks (water conservation bodies) cannot be alienated to any other person, (c) decision cannot be solely based upon the investment made by any person, (d) the construction of houses must be stopped, (e) that percolation tanks with sufficient number of recharged shafts and old feeders must be developed, (f) rainwater harvesting system must be introduced in the area with a complete ban on borewell/ tubewell in Peruru Tank area.

6 AIR 2006 SC 1350 at 1363.

7 The court also referred to the three types of restrictions as suggested by Prof. Sax in 'the Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention', 68 *Michigan Law Review*, 471-566 (1970).

Right to salubrious and decent environment

In *M.C. Mehta* v. *Union of India*[8] (Delhi commercial establishment case), three pronouncements were made by the Supreme Court on three different occasions and it was opined that 'none has any right, human or fundamental, to violate the law with impunity and claim any right to use a building for a purpose other than authorised'. It was made clear in unequivocal terms that residents of metropolitan cities have a right to salubrious and decent urban environment'. Blatant and large scale misuse of residential premises for commercial purposes and unauthorised construction prevailing in Delhi amounted to violation of this fundamental right, the directive principles of state policy and fundamental duties provided under articles 21, 48-A, 51-A(g), respectively.

In this case, the writ petitioners pleaded that shops, parlour and other commercial activities were going on in residential houses in large number of immovable properties throughout Delhi. This commercial use of residential premises was found to be in flagrant violation of various laws including municipal laws, master plan and other plans besides environmental laws. This misuse or commercial use of premises in residential area caused a lot of inconvenience and hardship to the residents of the locality and created an unhealthy environment in the area. Thus, it affected the human or fundamental rights of the residents. The court held that 'those who own properties have an implied responsibility towards the residents of the locality. The court cannot be a mute spectator when 'the violation also affected the environment and healthy living of law-abiders'. Therefore, the court ordered for sealing such residential premises. It was made clear that none has a right to use a building for a purpose other than authorised as no one has any right human or fundamental to violate the law with impunity.

The court found that such misuse or violation of the laws was with the consent or collusion of the officers of the government/municipal corporation etc. Therefore, such erring officers were to own personal accountability and were liable to pay compensation to affected persons. The polluter pays principle must be applied to make such officers liable. Thus, law enforcers were found to be law breakers. It was observed that the Supreme Court has a constitutional duty to protect fundamental right and in such cases the court has to intervene immediately so that the 'rule of law is preserved and people may not lose faith in it, finding violation at the hands of supposed implementers'. The problem was not of the absence of law, but of the implementation of the related laws. These officers of the government did not care for the laws but become partners in flouting the laws. Therefore, necessary directions were issued to take necessary action against them and punish them.

8 (2006) 3 SCC 399. The first pronouncement was made on 16.02.2006. Present judgment was in continuation of judgment dated 7.05.2004 – *M.C. Mehta* v. *Union of India*, (2004) 6 SCC 588. Second was on 24.03.2006 reported in (2006) 3 SCC 429 and third decision was on 03.04.2006 reported in (2006) 3 SCC 432.

The issue of accountability of officers (perpetrators) and the manner in which polluter pays principle would be made applicable to the owners and officers was postponed as there was an urgent need to stop the misuse of the residential premises atleast on the main roads. The court was emphatic in the implementation of laws *vis-à-vis* preserving 'the rule of law' as it was a case of misuse (commercial use) affecting the environment and healthy living of law-abiding citizens.

The court ordered that the owners of such houses should file affidavit within 30 days stating that misuse had been stopped and in case the misuse was not stopped, sealing of premises could commence after 30 days from the date of public notice. Detailed directions were issued including directions to the Municipal Corporation, Delhi to file status report (action taken report) by 15th of each month commencing from 10.04.2006.

Town planning versus ecology

The scheme comprising articles 14, 21, 48-A and 51-A(g) of the Constitution aims at preservation and protection of ecology. Ecological factors, indisputably, are relevant considerations in construing a town planning statute. Normally the court leans in favour of environmental protection in the light of above scheme and has given priority to environmental protection including right to clean water, air under article 21 of the Constitution. But the court in *Bombay Dyeing & Mfg. Co. Ltd.* v. *Bombay Environmental Action Group*[9] declared that 'there exists a stark distinction between interpretation of planning and zoning statutes enforcing ecology *vis-à-vis* industrial effluents and hazardous industries and those relating to concerted efforts at rehabilitating the industry'. The court has 'to interpret the planning and zoning statutes having regard to the purport and object for which the same was enacted, meaning thereby a holistic approach to a large number of problems.

In this case, various writ petitions were filed questioning the validity of Development Control Regulation 58 (DCR-58) framed by the State of Maharashtra in terms of the Maharashtra Regional and Town Planning Act, 1966. DCR-58 was enacted by the state legislature with a view to deal with situation arising out of closure or non-viability of various cotton textile mills, and to develop the available surplus lands because of closure of sick mills. The scheme of development of the area was floated by the Board of Industrial and Financial Reconstruction (BIFR) in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The plan also included the construction of residential houses. The Bombay Action Group challenged the validity of DCR 58 and proposal for the construction of houses as it would further deteriorate the quality of life in the town of Mumbai. Such construction would destroy the "open spaces" for residents of the city. The apex court declared that while entertaining PIL of this nature, the court should strike a balance between several interests like ecology, interest of workers, rights of

9 (2006) 3 SCC 434.

owners, interest of sick and closed industries and scheme framed by BIFR for revival of the company. The court should try indisputably to have a delicate balancing of these different factors.

The court, while pronouncing the judgment, declared that provisions of article 48-A are required to be construed as part of the principle contained in article 21. A statute may not be *ultra-vires* article 48-A, if it is not otherwise offensive of articles 21 and 14. The court also pointed out that articles 14, 21 and 48-A of the Constitution must be applied both in relation to an executive action as also in relation to legislation.

The court also reiterated that principle of 'sustainable development' has become a fundamental concept of Indian law which helps us to strike a balance between the environmental considerations and plans to promote development', whereas it is not possible to ignore inter-generational interests, it is also not possible to ignore the dire need of that which the society urgently requires'. Further, precautionary principle and polluter pays principle are essential features of the doctrine of sustainable development. They all help the court to balance between the urgent need of the society for development including construction activity and ecological impact of such activity. Therefore, before constructions are allowed to be commenced and completed, the insistence for environment impact assessment (EIA) is mandatorily required by competent authority. After considering all the factors, the court allowed the appeal as it was in consonance with the constitutional scheme provided under articles 14, 21, 48-A and 51A(g).

Industrial development versus ecological preservation

In *Karnataka Industrial Area Development Board* v. *C. Kenchappa,*[10] the Supreme Court clarified that there are two conditions which emanate from the principle of sustainable development: (a) the consequence and adverse impact of development on environment must be comprehended properly. It must be seen that the developmental activity does not cause irreparable loss to the ecology and environment of the area; (b) the clearance of the project from the concerned pollution control boards and the Department of Forest and Environment must be made a 'mandatory condition' for any developmental projects. The Supreme Court while arriving at this conclusion discussed in detail the principle of sustainable development, precautionary principle, polluter pays principle, and public trust doctrine with the help of decided cases of last two decades. In the instant case, the land of the respondent was reserved for agricultural and residential purposes. The appellant issued the orders for taking over of the said land for industrial purposes. It was pleaded that the Karnataka Industrial Area Development Act, 1966 empowered the board to acquire land for industrial purposes. But the board did not seek clearance from the Karnataka State Pollution Control Board and the State Department of Ecology and Forest and Environment. The court did not disturb the acquisition of land but held that the authorities must leave two kilometer

10 AIR 2006 SC 2038.

area from the village as free zone or green zone to maintain ecological equilibrium. It was also declared that the land in question was allotted for establishing a research and development project and not for a manufacturing process which may create polluted atmosphere. It was also reiterated that the constitutional scheme under articles 21, 48-A, 51-A(g) must be adhered to. This case is important as the above mentioned principles have been discussed in their historical perspectives. Thus, it gives a holistic view of the concept of sustainable development and its application in India.

Noise rules explained

The Supreme Court in *Forum, Prevention of Envn. & Sound Pollution* v. *Union of India*[11] reiterated that 'the freedom from noise pollution is a part of the right to life under article 21 of the Constitution. Noise interferes with the fundamental right of the citizens to live in peace. In this case, the appellant challenged the constitutional validity of sub-rule 3 of the Noise Pollution (Regulation and Control) Amendment Rules, 2002 regarding the powers of the state government to relax rule 2 which prescribes that 'a loudspeaker or public address system shall not be used at night (between 10.00 P.M. to 6.00 A.M.) except in closed premises'. The government is empowered under rule 3 to relax applicability of rule 2 and grant exemption between 10.00 and 12.00 P.M.. The court declared this power of relaxation as, constitutionally valid as this exemption is 'limited'[12] in nature and is in public interest. Therefore, it was not violative of articles 14 and 21. Moreover, such rules have been framed in the exercise of its statutory powers. But, at the same time, the state was cautioned to specify and declare the exemption 'in advance' mentioning the number and the particular days on which such exemption would be operative. Thus, it would exclude 'arbitrariness' in the exercise of power.

R.C. Lahoti CJI observed that looking at the diversity of cultures and religions in India, a limited power of exemption from operation of noise rules granted by the central government could not be held to be unreasonable. The power to grant exemption is conferred on the state government. It cannot be further delegated. The power is to be exercised by reference to the state as a unit and not by reference to districts.

The Gujarat High Court has made it clear that pronouncement of the Supreme Court in *In Re Noise Pollution*[13] has laid down the law relating to firecrackers in detail. Therefore, there is no necessity for the State of Gujarat to frame any policy with regard to restraining or regulating bursting of crackers on public street/roads. The court in *H.J. Vyas* v. *Police Inspector, Sabarmati Police Station, Ahmedabad*[14] also reiterated that the Supreme Court has laid down detailed guidelines in the form of direction in the above mentioned case.

11 AIR 2006 SC 348.

12 The relaxation is for a period of 2 hours a day only and that too for a maximum of 15 days in all during a calendar year during cultural or religions occasions.

13 AIR 2005 SC 3136.

14 AIR 2006 Guj 97.

The Noise Pollution (Regulation and Control) Rules, 2000 made under the Environment (Protection) Act, 1986, are sufficient enough to deal with such situations. It is high time that state authorities must do two things: (a) impose overall restriction with regard to bursting of crackers in the state, and (b) give due publicity to the restriction as directed by the Supreme Court.

II PROTECTION AND PRESERVATION OF ANIMALS

Protection and preservation of animals – a constitutional mandate

In *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat*[15] the Supreme Court declared that a reading of the articles 47, 48-A, 51-A(g) of the Directive Principles of State Policy reveals that there is a constitutional mandate to protect and preserve animals. Therefore, any prohibition or restriction by the state under the Bombay Animal Preservation Act, 1954 (as amended by the Bombay Animal Preservation (Gujarat Amendment) Act, 1994) is constitutional. The Act does not prescribe complete ban on slaughter of animals rather it puts restriction on the slaughter of cows, calves and other milch and draught animals only. Such a ban amounts to only reasonable restriction on the freedom of trade, profession and business 'in the interest of general public'. Thus, 'banning slaughter of cow progeny is not prohibition but only a restriction'. Such enactments are also in the interest of national economy. Butchers have also been left free to slaughter other animals than the animals specified in the Act. The cattle, which serve human beings for a long time, is also entitled to compassion when they grow old and cease to be milch or draught cattle. Secondly, it was made clear by the court that restriction placed on fundamental rights can also be placed on directive principles, when economy of the nation is based on such animals like cow and calves as per report of the National Commission on Cattle, July, 2002 (Vol. I.P. 279).

Cruelty against animals versus customary and religious festivity

The courts are progressively asserting ancient Indian ethos that non-violence is the highest form of *Dharma* (righteousness) and that law must evolve to suit the present needs, and respond to the changing society. Any religious activity which inflicts injury and pain to an animal, amounts to violation of the fundamental duty prescribed under article 51-A(g).[16] Thus, an individual who seeks to protect animals and their habitat is not exercising his right but acting in furtherance of his duty. The Madras High Court in *K. Muniasamythevar* v. *Dy. Superintendent of Police*[17] declared in unequivocal terms that persons cannot be permitted to cause violence and cruelty on dumb animals during religious festivals. It is a form of violation of the right to life

15 AIR 2006 SC 212.

16 Art. 51-A(g) 'All the citizens of India shall have a fundamental duty… to protect and improve the natural environment including forest, lakes and wildlife and *have compassion for living creatures.*

17 AIR 2006 Mad 255

and habitat. In the absence of such statutory right, the human species have a corresponding duty towards other species to forbear from inflicting injuries and pain in the name of ox race or bullock cart race (known as *rekla* race).

Section 11 of the Prevention of Cruelty to Animals Act, 1960 also deals with-offences of 'treating animals with cruelty'[18] Ox-races, bullock cart races or bull-fights fall within the ambit of section 11 (a) of this Act. Such races/ cannot be permitted to be conducted because they are customary, hereditary, or being conducted for more than 75 years.

It was also emphasized by the court that the Act of 1960 must be effectively implemented and authorities are under an obligation to take preventive action to ban such races. Positive action on the part of the government authorities and police by preventing such cruelty is the need of the hour. It was also suggested that to ensure prevention, there is an urgent need to increase the amount of fine and period of imprisonment. The state authorities and police were directed to ensure the prevention of cruelty and *rekla* race or oxen race or any other activity of entertainment causing cruelty to animals.

The Kerala High Court faced a typical situation when the Animal Welfare Board of India and others advocated for the preservation of stray dogs though suffering from fatal diseases or even of rabies, disassociating themselves from any concern for human beings who fell victims of bite of stray dogs.[19] The court very rightly declared that the right to life enshrined in article 21 of the Constitution would take precedence over the Animal Birth Control (Dogs) Rules, 2001, which had provisions to protect stray dogs even though afflicted with fatal diseases. The Prevention of Cruelty to Animals Act, 1960 under section (f) 1(3)(b) and 38(1)(2)(e-a) provide for destruction of 'unwanted animals' by local authorities. Rules made in 2001, make provision for the preservation and immunization of stray dogs but they are not applicable to dogs afflicted with fatal diseases or suffering from rabies. Therefore, the order of Ombudsman directing corporations, municipalities and panchayats to destroy such dogs was proper. Such infected animals cannot be protected at the cost of invaluable human lives.

Abattoir-laws and policies

It has been decided time and again that the Environment (Protection) Rules, 1986 and the standards prescribed by the aforesaid rules must be followed. Further, under rule 3 the state boards are permitted to prescribe higher standards. All industries have to follow those standards mandatorily. In *Akhil Bharat Goseva Singh* v. *State of A.P.*[20], it was found that the A.P. Pollution Control Board granted permission to operate the abattoir on the

18 S. 11(1): If any person (a) beats, kicks, over-riles, over-drives over loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering…'

19 *Animal Welfare Board of India* v. *Ombudsman for L.G.S.* 1, AIR 2006 Ker 201; also see *People for Ethical Treatment of Animals* v. *Union of India,* 2005 (7) SCALE 10.

20 (2006) 4 SCC 162.

lower standards than prescribed by the Environment (Protection) Rules, 1989. It was a clear case of violation of these rules. The court decided that the abattoir in question – Al-Kabeer, was working for last 10 years and was not violating the rules. Therefore, keeping in view the economic policy of the central government, the abattoir cannot be closed down at this stage. All the more various directions were issued to A.P. Pollution Control board to rectify its consent order in accordance with these rules. Further, in case the abattoir fails to comply with the direction, it would be open to the authorities to direct closure of the Al-Kabeer unit. The state government was also directed to monitor strictly and regularly Al-Kabeer's compliance with all applicable laws, particularly provisions of the A.P. Prohibition of Cow Slaughter and Animal Preservation Act, 1977. The court also declared that looking to the Report of Krishna Committee (which made the Environment Impact Assessment in this case) and 16th and 17th Quinquennial Census, the abattoir-Al-Kabeer did not result in depletion of buffalo population in the hinterland. The court also made it clear that if there was defect in composition of pollution control board, it would not vitiate the consent order issued by the board.

The apex court, quoting its previous judgment – *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat*,[21] reiterated that laws and policies to encourage export of meat and meat products and permission of slaughter houses are not unconstitutional. Moreover, the export policy itself permits export of meat from buffaloes and other animals that are certified as not useful for mulching, breeding or draught purposes. But the central government must constantly review this policy periodically.

Disposing of another appeal, *Umesh* v. *State of Karnataka*[22] the apex court declared that any total prohibition on slaughter of cows must be viewed in the light of articles 48, 48-A and 51-A(g) and these provisions work as reasonable restrictions on fundamental rights. In this case, the Mysore Prevention of Cow Slaughter and Cattle Preservation Act, 1964 totally prohibited the slaughter of cows. The court declared that in the light of articles 48-A and 51-A(g) provision of the Act must be reviewed. Further, article 48 confined only to the cows and calves and those animals which are at present capable of yielding milk or of doing work as draught cattle. And it does not extend to cattle which have ceased to be used for milch and draught purposes. Therefore, the issuance of a writ of *mandamus* to compel total prohibition of cattle slaughter would amount to judicial legislation and would encroach upon the powers of the legislature.

In *Buffalo Traders Welfare Association* v. *Union of India*,[23] the court directed the Municipal Corporation, Delhi to file affidavit detailing steps taken to prevent illegal slaughtering and tanning in various localities.

21 *Supra* note 15. In this case it was declared that arts. 48 and 48-A of the Constitution must be read with fundamental rights to assess the reasonableness of such laws and legal restrictions placed on fundamental rights.

22 (2006) 4 SCC 162.

23 2005 (5) SCALE 289.

III CONSERVATION OF FORESTS AND WILDLIFE

Godavarman revisited

Y.K. Sabharwal J, the then Chief Justice of India, delineated the contours of Public Interest Litigation (PIL) again in the case of *T.N. Godavarman Thirumulpad* v. *Union of India*.[24] It was declared that 'howsoever genuine a case brought before a court by a PIL be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose *bona fides* and credentials are in doubt'. But the court can still examine the issue if it is of serious nature of public cause and looking to grave public injury by appointment of *amicus curiae*. In the given case, the court examined the background of the petitioner and concluded that he was not really a public interest litigant and abused the process of law. He deserved to be sternly dealt with as he wasted the precious time of the court resulting in incurring heavy expenses by the Central Empowered Committee (CEC). Therefore, the court fined Rs.1,00,000/- which was to be paid to the CEC and could be utilized for preservation of forests in the State of Chattisgarh by the CEC.

In this case, the petitioner challenged the allotment of land of 15 hectres by way of lease to M/s Maruti Coal and Power Ltd. for setting up coal washery. It was claimed that the land leased out was a forest land, which could not be used for non-forest purpose i.e. for coal washery. The court reiterated that the definition given to the term 'forest' must be understood according to its dictionary meaning. Thus, it covers all statutorily recognised forests, whether designated as reserved, protected or otherwise, for the purpose of section 2(1) of the Forest Act, 1927. By adopting a practical approach, 'an area measuring 10 hectares or more having an average number of 200 trees per hectare ought to be treated as forest'. Moreover, it includes any area recorded as forest in the government record irrespective of the ownership. The matter related to the disputed land was referred to the CEC who gave three reports on three different occasions, and declared that the land in question was a non-forest land. Therefore, it was declared that the petitioner did not come to the court with clean hands but with ulterior motives. He was acting on behalf of other competitors of the M/s Maruti Coal Power Ltd. Looking to the circumstances, the court dismissed the petition with costs and also warned the petitioner not to use 'recuperate language' in the pleadings. The court, thus, after defining the terms forest and 'PIL' gave a word of caution to the persons who file PIL for personal reasons and popularity rather than for redressing genuine public grievances.

24 AIR 2006 SC 1774. About 102 orders have been pronounced by the Supreme Court in this case for the protection and preservation of forests. The editors, Supreme Court Cases (SCC) have saluted the Supreme Court for truly discharging its duty as the '*sentinel on the qui vive*'. The cases have been reported by SCC arranging them chronologically.

With reference to conservation, preservation and protection of forests and ecology and use of forest for non-forest purpose following principles were laid down by the apex court.

(1) The principal aim of the Forest Policy is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.
The Forest Policy has a statutory flavour. The non-fulfilment of the aforesaid principle would be violative of Articles 14 and 21 of the Constitution.

(2) Compensatory Afforestation Fund Management and Planning Authority (CAMPA) created by the Ministry of Environment and Forests with the concurrence of the Central Empowered Committee (CEC) was essential. It shall allocate money to the States for their site specific schemes out of Compensatory Afforestation Fund. This fund has been created having regard to the principles of intergenerational justice.

(3) If it is at all necessary for economic development to use forest for non-forest purpose, then before permission is granted by the CEC, there should be some scheme (including short term as well as long term measures) for regeneration of forests. Constitution of CAMPA under section 3(3) of the Environment (Protection) Act, 1986 is a laudable step in this direction.

(4) Money received towards 'compensatory afforestation' additional, compensatory afforestation, penal compensatory afforestation, net present value (NPV) of forest land, catchment area, treatment plan fund, etc. shall be deposited in Compensatory Afforestation Fund.

(5) Fund received from the user agencies shall be used exclusively for undertaking the conservation activities.

(6) Artificial regeneration activity must be started at the earliest. Local and indigenous species must be used in plantations.

(7) Independent system of concurrent monitoring and evaluation should be evolved.

(8) Forest management planning involves a blend of ecological, economic and social systems with the economic and social sides of planning.

Levying of appropriate net present value (NPV) on the user agency of such diverted forests land as the price of such forest use is legal. All projects for use of forest for non-forest purpose shall be required to pay NPA except government projects like hospitals, dispensaries and schools.

The Supreme Court declared that the water bodies like lakes, tankers have to be protected and preserved. Nobody can be allowed to construct bunds,

fish tanks and discharge effluents into these bodies.[25] In this case, encroachment in the form of fish tanks and discharge of effluents into lake caused blockage of free flow of water into the Kolleru Lake which is one of the largest shallow freshwater lakes in Asia. This lake formed part of the wildlife sanctuary. The court held that section 29 of the Wildlife (Protection) Act, 1972 prohibits commercial activity inside a sanctuary which diverts, stops or increases the flow of water of lakes which formed part of wildlife sanctuary. Therefore, notification prohibiting fish tanks for aquaculture or for any other purpose and use of pesticide and chemical was valid as it did not take away the right to do fishing with traditional methods using nets.

Flagman T.N. Godavarman Thirumulpad a milestone case echoed

The judgment pronounced by the court in *T.N. Godavarman Thirumulpad*[26] has become a guiding force in cases of grant of licence to sawmills, veneer and plywood mills within the forest area. Detailed directions were issued by the apex court on 29.04.2002[27] and 12.12.1996,[28] wherein all the states were directed to constitute 'Expert Committee' to assess sustainable capacity of saw mills and timber based industries in the states. It also directed the central government to constitute Central Empowered Committee (CEC) as envisaged by section 3 of the Environment (Protection) Act, 1986 to monitor the implementation of the court orders and examine the application of the saw mill owners. It must be remembered that the court had already made it clear that any non-forest activity, mining activity and saw mills, within the forest area without the 'prior approval of the Central Government' must cease forthwith.[29] *Thirumulpad* case particularly dealt with the saw mills, veneer and plywood operating in the forest areas.

In *Ajendra Singh* v. *State of U.P.*[30] the Allahbad High Court has widely quoted the various directions issued by the Supreme Court in *Thirumulpad* cases on various occasions and based its judgments on them. In this case, the petitioners claimed that the saw-mill in question was established in 1989 and they also paid licence fee upto 1997. They also pleaded that as per amendment made in rule 5 of the U.P. Establishment and Regulation of Saw Mills (II Amendment) Rules, 1998, if the application was not disposed of within 60 days after deposit of licence fee, licence would be deemed to have been granted. And thus, they had received 'deemed consent' to operate saw-mills. Some of the applications of the petitioners were rejected in violation of articles

25 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2006) 5 SCC 47 (decided on 10.04.2006).
26 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 9 SCC 502; AIR 1997 SC 1228; AIR 1997 SC 1233.
27 (2002) 9 SCC 502.
28 AIR 1997 SC 1228 and AIR 1997 SC 1233.
29 *T.N. Godavarman Thirumulpad* v. *Union of India*, AIR 1997 SC 1228 (12.12.1996).
30 AIR 2006 All 227.

19(1)(g), 14, and 21.They prayed that the court should issue appropriate writ and permit their saw mills to operate.

The Allahbad High Court quoted various reported orders of the Supreme Court pronounced on 12.12.1996, 04.03.1997, 08.05.1997, 09.05.2002, 29/30.10.2002 in the case of *T.N. Godavarman Thirumulpad* in the light of the provisions of the Forest (Conservation) Act, 1980. It was made clear that mining activity and running of saw mills including veneer or plywood mills are 'non-forest purpose' and such activities must cease forthwith if they are without prior permission of the central government. The court declared that the licence to operate saw mills were never issued to the petitioners though they deposited the licence fee. Therefore, none of the petitioners were issued 'valid licence' prior to March 4, 1997. As a result, there was no question of renewal of their licence. Secondly, their petitions were dismissed by the court as they failed to place their application for the grant of licence before the Central Empowered Committee[31] after their applications were rejected by the divisional forest officer and regional forest officers.

The Uttaranchal High Court in *Mohd. Hazi Rafeeq* v. *State of Uttaranchal*[32] declared that any interpretation which dilutes rigour of the restrictions imposed by the Supreme Court cannot be accepted. Therefore, no saw mill can be located within 10 Kms. from existing forest. In such cases to measure the distance, aerial distance will be considered and not the road distance.

The Supreme Court has made it very clear that the directions issued by the court for disciplinary/criminal proceeding against erring forest officers are prospective in nature. If the departmental enquiry has been concluded in favour of the officer, before the decision of the Supreme Court in *T.N. Godavarman* case on 12.05.2001, the same cannot be reopened thereafter. Any order violative of this order is liable to be quashed. [33]

No right to live in wildlife area without permission/permit

In *Mahesh Kumar Virjibhai Trivedi* v. *State of Gujarat,*[34] the Gujarat High Court pointed out that no one has a right to enter/possess a land in a sanctuary except under a permit granted by the chief wildlife warden as per the scheme provided under sections 27 and 28 of the Wildlife (Protection) Act, 1972. In this case, the government allotted land in 1978 to the petitioners under a scheme for rehabilitation of the Pakistani nationals who crossed over to India in 1971. Later on, a Wild Ass Sanctuary was declared in 2001under the Wildlife (Protection) Act, 1972 covering the land area allotted to the petitioners. They challenged this declaration and demanded that they may be permitted to live at the allotted land even if may it be inside the sanctuary. The

31 As per directions of the Supreme Court order in *Godavarman Thirumulkpad* case dated 09.05.2002 and of 29/30.10.2002

32 AIR 2006 U'chal 18.

33 *Mukesh Ali* v. *State of Assam*, (2006) 5 SCC 485.

34 AIR 2006 Guj 35.

court declared that the petitioners cannot claim any right to live there and continue to have the possession of the land as the land was within the game sanctuary.

Forest produce

Similarly, the Gauhati High Court also quoted with approval the definition given by the Supreme Court in *Suresh Lohiya* v. *State of Maharastra*[35] of the 'forest produce' under the Forest Act, 1927. The appellant prayed to implement a notification dated 04.05.1992 issued by the government which declared that transit pass was not required for the finished goods of bamboos including 'beti' and 'chati'. This notification was opposed to the definition provided by the Supreme Court in *Suresh Lohiya* case, but writ petitioners did not challenge the legality of the notification but sought to implement only the notification dated 04.05.1992. The court directed the implementation of this notification but at the same time suggested that the government may amend this notification if so desired. The judgment has been pronounced in a mechanical way and did not strike down the notification of Government of Assam dated 04.05.1992 which was contrary to the decision of the Supreme Court, because 'beti and chati' were finished products and required transit pass to take them out of forest land. Therefore, the notification was not in consonance with the decision given by the Supreme Court as 'beti and chati' were not forest produce. Thus, the judgment did not aim at protecting the forest produce and also watered down the judgment of the Supreme Court. This case has been relied on by the Gauhati High Court in *Mulibash Hastasilpa Samabay Samity Ltd*. v. *State of Assam.*[36] In this case the Assam Government by a notification declared that bamboo as a whole is forest produce but if a product is brought in existence by human labour, such article or product will cease to be a forest product. The Government of Assam included mats, chati and beti under this category and exempted them from transit fee. The court declared that the notification cannot be said to be illegal and suggested that the state may amend the notification to fall in line with the judgment pronounced by the Supreme Court in *Suresh Lohiya* v. *State of Maharastra*.

The Allahbad High Court[37] made it clear that the term 'forest produce', provided under the Forest Act, 1927 (section 2(4)(b)) would include 'even mines and minerals which remained beneath the surface of earth with minerals, stones, and other products locked up in the land'. If such products are taken through forest area, they are liable to transit fee. Therefore, if anybody takes them outside the forest, the transit tax is payable on them. It was made clear

35 (1996) 10 SCC 397. 'The Court held that in "though bamboo as a whole is forest-produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce…'

36 AIR 2006 Gau 113.

37 *Ashok Kumar Anandai* v. *The State of U.P.*, AIR 2006 All. 246; quoted *Janu Chandra* v. *State of Maharastra*, AIR 1978 Bom 119 (FB).

by the court that the term forest must be given wider meaning and it covers all statutory recognised forests, whether designated as reserved, protected or otherwise for the purposes of section 2(1) of the Forest Conservation Act, 1980.[38] In this case lease was granted to the petitioner under the provision of U.P. Minor Minerals Concession Rules, 1960 for 10 years initially and was subsisting on account of renewal. On 25.11.2005, the conservator of forests issued an order to charge 'transit fee' from the lessee on timber and forest produce. The court declared that stones, boulders, etc. if they pass through forest area would be treated as if 'brought from forest'. Therefore, levy of fee was justified.[39]

In various cases, the courts have held that the lease of the land can be cancelled by the government if the area leased by it fell within the wildlife sanctuary even when the lease had been given by the competent authority. The lessee cannot claim any right to possession of the land.[40] Such allotment can be cancelled as provided under sections 18, 20 and 21 of the Wildlife Protection Act, 1972. In such cases prior permission of 'the Central Empowered Committee' is necessary if the saw mill falls within 10 kms radial distance from village forests or within reserve forest wild life sanctuary.[41] The forests have to be preserved and protected even at the cost of business interests of persons.[42]

Concept of forest during post-independence era

The Madhya Pradesh High Court has made it very clear that the land which was declared to be reserve forest or village forest by the erstwhile rulers will be designated and treated as forest. The Forest Act, 1927 would be applicable in such cases. Consequently, no non-forest activity can be permitted on such land without the prior permission of the central government as provided by section 2 of the Forest (Conservation) Act, 1980. Even encroachment cannot be permitted. In *Kamal Kishored* v. *State of M.P.*[43] some particular land was declared as forest land, reserve or protected forest or village forest by the erstwhile rulers of the Gwalior State. After merger of these princely states into Madhya Pradesh, there was large scale encroachment on such forest land and various other non-forest activities were undertaken. The Forest Act, 1927 came into force in the State of M.P. in 1959. It was amended

38 Quoted the Supreme Court judgment in *T.N. Godavarman Thirumulkpad* v. *Union of India*, AIR 1997 SC 1228.

39 See also *M. Prabhakar Reddi* v. *State of A.P.*, AIR 2006 AP 386.

40 *Mahesh Kumar Virjibhai Trivedi* v. *State of Gujrat*, AIR 2006 Guj 35. In this case the land was allotted to the petitioner by the collector on 13.07.1979 & 16.09.1978 for the purpose of cultivation inside the wild sanctuary declared under the Wildlife Protection Act of 1972.

41 See *M/S Maa Dasabhuja Furniture Unit* v. *State of Orissa*, AIR 2006 Ori 63.

42 *Mohd. Hazi Rafeeq* v. *State of Uttranchal*, AIR 2006 U'chal 18.

43 AIR 2006 MP 167. The court quoted and followed the definition of forest as provided by the Supreme Court in *TN Godavarman Thirumulpad* v. *Union of India*, AIR 1977 SC 1228.

in 1965 to incorporate section 20-A in the Forest Act, covering all lands declared by erstwhile ruler to fall in the definition of protected forest. Thus, the state was asked to ban all non-forest activities carried on in such land including mining activity and colonization.[44]

The Supreme Court made it clear in *State of Tamil Nadu* v. *P. Krishnamurthy*[45] that the state has extensive right to quarry sand. Therefore, section 38-A of the Tamilnadu Minor Mineral Concession Rules, 1959 which vests such rights in the state government is constitutional. Thus, the state also has right to terminate the lease. But a notice or providing an opportunity of being heard must be given before terminating the lease for quarrying sand in government land. The section was incorporated with a view to stop the ecological damage caused by such quarrying activity if it affected the smooth flow of river, causing damage to the river beds and river banks, and drinking water system. Such environmental violations cannot be permitted in the name of holding a lease. The state government can terminate the lease in such cases by giving a notice and providing an opportunity of being heard.

In *Kumari Verma* v. *State of Kerala*,[46] the Supreme Court upholding the decision of the high court held that the Kerala Private Forests (Vesting and Assignment) Act, 1971 cannot claim that part of private forest on which cardamom trees were planted about 25 years prior to the date fixed for taking over the land as they do not form part of private forests. Therefore, such part of land cannot be taken over by the government.

The court cautioned that the Kerala Preservation of Trees Act, 1986 and Kerala Private Forests (Vesting and Assignment) Act, 1971 have no application where land in dispute has been declared by the forest tribunal as 'not a private forest'.[47] Thus, government notification regarding the prohibition of felling of trees cannot be made applicable on land which is not a private forest.

Non-disclosure amounts to fraud

If material facts are being suppressed by the applicant while seeking renewal of quarry lease, the previous orders can be cancelled as the order is obtained by fraud.[48] It was observed by the court that 'Fraud and Justice never dwell together' *(Fraus et jus nunquam cohabitant)*. In *Reliance Granite* case[49] the Reliance Granite Pvt. Ltd. applied for renewal of the mining lease, but did not disclose the material fact that the land in question formed part and parcel of 'reserve forest' and as such required the prior approval of the central government. The court held that such non-disclosure and misrepresentation

44 *Ibid*.
45 AIR 2006 SC 1622.
46 AIR 2006 SC 3048.
47 *Managing Trustee* v. *State of Kerala,* AIR 2006 Ker 300. The court fully concurred with its own judgment in *Kottal Avishumma* v. *State of Kerala,* AIR 199 Ker 132.
48 *Reliance Granite Pvt. Ltd.* v. *Government of Andhra Pradesh,* AIR 2006 A P 292
49 *Ibid.* Also see *Hamza Haji* v. *State of Kerala,* (2006)7 SCC 416; *State of Rajasthan* v. *Nathu Lal,* AIR 2006 Raj 79.

of facts before a public authority amounted to 'fraud' and 'it is a settled principle that fraud vitiates everything'. The appeal was dismissed by the high court.

Permission of the central government mandatory

It has been made clear time and again that if the lessee has applied for renewal through proper authorities who also recommended the same, and no rejection letter was received, the lessee is entitled to continue mining within permissible limit. In this case,[50] the petitioner applied for the renewal of the already granted stone minning lease. His prayer for renewal was forwarded by the forest department to the central government for the permission in reference to provisions of the Forest (Conservation) Act, 1980. The petitioner did not receive any rejection order, but received a memo of rejection of lease dated 26.10.1996 for second renewable lease for stone minning. Meanwhile, the lessee continued his work in the broken area. The court found that the lessee was working in a broken area, therefore, he was permitted to continue his minning activity in broken area only. But the court cautioned that the petitioner should not cause any damage to the trees of that area. He could continue to work till he is communicated of the rejection of his application by the central government. The *Ambica Quaries* case[51] was distinguished as in that case the state government was of the opinion that no renewal should be granted and in the present case the State Forest Department recommended for renewal of the mines to the central government.

In *Kamaljeet Singh Ahluwalia* v. *State of Bihar*[52] the Jharkhand High Court made it clear that all mining activities within forest area requires 'prior permission' of the central government from the date the Forest (Conservation) Act, 1980 came into force i.e. 25.10.1980. This clause is equally applicable for carrying on mining activities even on the broken area prior to 25.10.1980. It had already been clarified by the Supreme Court in *Ambika Quarry Works* v. *State of Gujarat*[53] long back in 1987. Therefore, the petition was dismissed.

In *State of M.P.* v. *Kartar Singh Bagga*,[54] the court made it clear that even if *patta* has been granted, it does not include the permission to fell trees, when the land in question falls within a 'protected forest land'. It was a clear violation of section 2 of the Forest (Conservation) Act, 1980. The court further directed the state government to constitute a committee consisting of conservator of forest and others to decide how many trees could be cut in the area.

50 *Naresh Kumar* v. *Dy. Commissioner, Hazaribagh,* AIR 2006 Jhar 96.
51 AIR 1987 SC 1073.
52 AIR 2006 Jhar 44.
53 AIR 1987 SC 1073.
54 AIR 2006 (NOC) 868 (MP).

IV RIGHT TO WATER

Right to water — part of right to life

The Supreme Court pronounced a significant judgment in *Susetha* v. *State of Tamil Nadu*.[55] The court has observed:[56]

> The water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality of life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognised in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife.

It was also clarified that 'natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen to disuse'. The court also advocated for the protection of wetland and natural lakes and referred the related cases for their protection and improvement.[57] In the instant case, the petitioner pleaded for the protection and restoration of an old tank of village, which was lying in disuse and in dilapidated condition. The court dismissed the petition as there were already five tanks in working condition in addition to one in question and this recharge of the tank would be insignificant. The court, while arriving at this conclusion, declared that the state is enjoined with a duty to maintain natural resources providing for water storage facilities. And the state is required to take preventive and also removal of unlawful encroachment so as to maintain the ecological balance. Treating it as constitutional obligations, it was emphasized that in cases of protection of natural resources, *the court has a responsibility of 'a higher degree of judicial scrutiny'*. It was declared that the principle of sustainable development and doctrine of public trust are fundamental concepts of Indian law and are not empty slogans. In the light of these principles, we have to strike a balance between the need to protect ecological balance and necessity for developmental activities like construction of houses for poor.

Looking to the necessity and importance of potable water, the Kerala High Court in *Vishala Kochi Kudivella Samarakhana Samithi* v. *State of Kerala*[58] directed the state government to take all steps necessary for supply of potable drinking water in sufficient quantity to the people through an efficient water

55 (2006) 6 SCC 543.
56 *Id.* at 546.
57 For wet land – *People United for Better Living in Calcutta* v. *State of W.B.*, AIR 1993 Cal 215 and for natural lakes – *T.N. Godavarman Thirumulpad* v. *Union of India* (2006) 5 SCC 47.
58 AIR 2006 (NOC) 744 (Ker).

supply system. It was also observed that such projects must be given precedence over other developmental projects. Water supply project must be completed at the earliest even at the cost of other projects.

Raising water level of a dam is not an inter-state water dispute

The Inter-State Water Disputes Act, 1956 defines such disputes under section 2(c). It excludes the jurisdiction of the Supreme Court in respect of water dispute referred to the tribunal. But the question whether the height of a dam should be raised or not is not a question of inter-state water dispute. In the instant case- *Mullaperiyar Environmental Protection Forum* v. *Union of India*[59] objections were raised by the State of Kerala against the State of Tamilnadu, disputing the decision of the State of Tamilnadu to raise the height of Mullaperiyar Dam from 136 feet to 142 feets. The State of Kerala pleaded that if the height was raised it would damage the dam and adversely affect the flora and fauna of the area, jeopardize the wildlife and may cause havoc in case of disaster/breach of dam. Moreover, since the dam was constructed about 100 years ago, it will not be able to withstand the pressure of water if the height of the dam is raised. Some part of the dam is in the State of Kerala as the river periyar flows through Kerala also.

The apex court appointed an expert committee to inquire into the matter which did not find any serious objection in raising height of the dam. The Central Water Commission, after inspection of the dam, also did not find any substantial objection. On the basis of these reports of two expert bodies, the court concluded that-

(a) Since the controversy relating to agreement for use of water between Maharaja of Travancore and State Secretary of India (dated 1886) is not about the rights, duties and obligation of the agreement, therefore, the dispute of Kerala State is not liable to be referred to arbitration. Thus, it does oust the jurisdiction of the Supreme Court.
(b) Discretionary relief can be granted by the court under article 32 of the Constitution.
(c) Strengthening work of the existing dam is not a non-forest activity, therefore, does not attract the provisions of the Forest (Conservation) Act, 1980.
(d) The expert's reports have made it clear that the raising of water level will not affect the boundaries of wildlife sanctuary, thus, would not adversely affect the wildlife or forest. Rather, it was reported that there will be improvement in the environment and would increase the carrying capacity for wildlife, like elephant, tiger and birds.

59 AIR 2006 SC 148; the water dispute means a dispute as to use, distribution or control of the waters of, or as to the interpretation or implementation of agreements of water.

In the light of above observations, the Supreme Court permitted the State of Tamilnadu to raise the height of the dam from 136 feet to 142 feet.

V PARKS AND PLAY GROUNDS

Public parks

In *Ravindra Tyagi* v. *State of Rajasthan*,[60] the state allotted an open land, which was reserved for public park, to an industry. The petitioner objected to such allotment but the court concluded that since a big area (bigger than the plot reserved for park) has already been reserved for park and will be developed as public park, the decision of the state cannot be interfered with. Moreover, the newly allotted park land area is near a water tank, it would serve a public purpose. Therefore, such re-allotment would help the public to enjoy a park near water body (hardly 150 meters away). The court looking to the fact concluded that new allotment must be able to serve the public purpose and help to sustain the natural environment of the area.

The Kerala High Court took a bold step by issuing a writ of *mandamus* against the corporation of city to remove the encroachment on a public park and evict the office bearers of trust.[61] It was made clear that the corporation cannot refrain from taking any action to safeguard its own property merely because it envisaged that it would lead to communal tension. In this case, a public park land was handed over to the corporation of city for maintaining it as park. The corporation leased out the park land to a trust which constructed a temple in a portion of the leased land. The court asserted that a land earmarked for park cannot be handed over to a trust to construct temple. The land should be maintained as park and cannot be used for any other purpose. Such temple cannot be allowed to continue on the park land merely fearing that it would cause communal disharmony. Similarly, in *Shasthri Nagar Colony Welfare Committee* v. *Calicut Development Authority*[62] the Kerala High Court declared that the open space set apart for park and play ground in a housing colony could not be sold by the development authority for any other purpose without the modification of town planning scheme. Any permission to sell granted by the state government cannot justify it. Therefore, the proposed sale to Lakshadweep Administration by the authority was declared unauthorised and was quashed.

Interference by court

There are occasions when court declines to interfere in matters where even some damage is caused to the ecology of the area. One such instance was in *Forum for Socio-Economic Studies No. 165* v. *The Commissioner of Land Revenue*[63] wherein the Kerala High Court refused to issue a writ of

60 AIR 2006 Raj 220.
61 *Shashikant Vasudev Tadkodhar* v. *State of Karnataka*, AIR 2006 (NOC) 440 (Kar.).
62 AIR 2006 Ker 46.
63 AIR 2006 (NOC) 1001 (Ker).

mandamus even when widening of road covered some of the area designated as park. In a PIL it was claimed to be violative of the Kerala Parks, Play Fields and Open Spaces (Preservation and Regulation) Act, 1969. The court declared that widening of road has done 'immense good to public which was necessary for the safety and convenience of the public at large'. Therefore, no objection could be raised in a PIL. Even procedural lapses on the part of the state cannot be challenged. In this case, the area of the park was reclaimed from backwaters.

VI MISCELLANEOUS

Directions of the pollution board should not be interfered

The Calcutta High Court clarified in *M/s Alloy Steel Rolling Mills* v. *West Bengal Pollution Control Board*[64] that the direction issued by the pollution control board under rule 3(2) of the Environmental (Protection) Rules, 1989, should not be interfered with unless and until there was a proof of bias and perversity in such directions. In this case, the W.B. Pollution Control Board, on the report of the expert committee and recommendations of the National Engineering and Research Institute (NEERI) ordered the mill to change over from coal fired system to cleaner fuel system of either gas or oil within a stipulated period. The board passed its decision under rule 3(2) for the compliance with National Ambient Air Quality Standards. It was further held that when the directions of the board are based on the basis of the recommendation of the high powered expert committee which examined the whole issue, the precautionary principle has no application. Therefore, any action on the part of the court is uncalled for unless 'the policy decision is *ex facie* unreasonable and perverse'. The court found that, the decision of the W.B. Pollution Control Board was "taken in furtherance of public interest and in order to prevent further degradation of air quality in or around Kolkatta Metropolitan Area". The writ petition was dismissed.

Contemnor punished strictly

In *T.N. Godavarman Thirumulpad* v. *Ashok Khot & others*[65], the Supreme Court declared that if specific orders of the apex court are not followed, it amounts to contempt of court. Such disobedience strikes at the very root of rule of law on which present judicial system rests. Rule of law is the very foundation of a democratic society. One who knowingly did not follow the orders of the Supreme Court has to be dealt with strictly. In this case, the contemnor Ashok Khot, Principal Secretary, Department of Forest, State of Maharastra, made certain insertions in the file for the permission of opening saw mills in the State of Maharashtra. He inserted a hand written note in the related file disputing the opinion given by the Central Empowered Committee (CEC) and sent the file for approval to the minister, in-charge of Department of Forest, Swarup Singh Nayak. He, in view of the recommendation of the first

64 AIR 2006 Cal 74.
65 AIR 2006 SC 2007.

contemnor, granted permission for opening of the saw mills. The court came to the conclusion that the minister was well aware of the specific orders the Supreme Court had passed on 14.07.2003 for the closure of all unlicensed saw mills, vaneer and plywood industries and not to reopen them and the opinion expressed by the Central Empowered Committee (CEC). The court found both the persons guilty of wilful contempt of court. The court also held that the apology is an act of contrition; it must be offered at the earliest opportunity. It is not a weapon of defence to purge the guilt of the offence. Therefore, the court punished both the contemnors for one month's simple imprisonment. This judgment of the court will be of deterrent effect on prospective contemnors.

VII CONCLUSION

The above survey makes it crystal clear that Indian environmental jurisprudence, is achieving new dimensions day by day. The various statutes have been interpreted in the light of the constitutional scheme relating to protection and preservation of the natural environment as well as human right issues. Since law is never static, it changes with the changing times. Therefore, interpretation and application of constitutional and human rights (including environmental rights) has never been limited only to the black letters of law by the Supreme Court. Expansive meaning of such rights has all along been given by the courts by taking recourse to creative interpretation which led to the creation of new rights. As under article 21, this court has created new rights including the right to health and pollution free environment'[66] But the court cannot usurp the power of legislature and substitute a law in the name of purposive interpretation.

By issuing necessary directions, the apex court has zealously safeguarded the environment and prevented abuse of environment by individuals or authorities under the state. The court has taken stern steps to implement the constitutional scheme to protect and improve the environment under articles 21, 48-A, and 51-A(g). Indeed, the conception of the doctrine of sustainable development is a welcome feature and it has been embedded in our environmental jurisprudence. Its ancillary principles—precautionary principle, polluter pays principle, principle of inter-generational equity—have all been expanded and explained in the cases decided by the Supreme Court during the year 2006.

66 See *Bombay Dyeing & Mfg Co. Ltd* v. *Bombay Environmental Action Group,* (2006) 3 SCC 439 at 490-91.